

# Order

Michigan Supreme Court  
Lansing, Michigan

January 30, 2012

Robert P. Young, Jr.,  
Chief Justice

143337

Michael F. Cavanagh  
Marilyn Kelly  
Stephen J. Markman  
Diane M. Hathaway  
Mary Beth Kelly  
Brian K. Zahra,  
Justices

MICHAEL MCGEE,  
Plaintiff/Counterdefendant,

v

SC: 143337  
COA: 296452  
Macomb CC: 2008-002139-NO

CITY OF WARREN,  
Defendant/Counterplaintiff/Cross-  
Plaintiff-Appellant,

and

TONY ANTHONY, INC.,  
Defendant/Cross-Defendant-  
Appellee,

and

ANDREW ECKSTEIN, MAJOR CEMENT  
COMPANY, INC., and ANDERSON, ECKSTEIN  
& WESTRICK, INC.,  
Defendants.

---

On order of the Court, the application for leave to appeal the May 24, 2011 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we VACATE in part the judgment of the Court of Appeals and we REMAND this case to the Court of Appeals to apply MCL 600.5807(8) to the City of Warren's claims for breach of contract (insofar as they do not seek indemnity for damages sustained as a result of tortious injury) and, if necessary, for consideration of the remaining issues raised in the appeal. MCL 600.5839(1) bars any action against a contractor seeking indemnity for damages resulting from bodily injury arising out of a defective and unsafe condition of an improvement to real property. *Miller-Davis v Ahrens Construction, Inc*, 489 Mich 355 (2011). However, the statute of repose does not apply to non-indemnity actions for breach of contract.



h0123

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 30, 2012

*Corbin R. Davis*

Clerk